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ZONING BOARD OF APPEALS
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ZONING BOARD OF APPEALS
Minutes – Second Revision
July 8, 2021

ROLL CALL:

Acting Chairman Rodney Moore called the web-based meeting, via Zoom, to order at 7:00 p.m. and explained the procedures. Present by roll call: Joseph Hanna, Juan Rivas, Michael Sibbitt, and Peter DeLucia. Staff present: Zoning Enforcement Officer Sean Hearty and Secretary Mary Larkin. Mr. Moore explained the procedures for the meeting

Motion to hear Application Nos. 21-26, 21-27, 21-28, 21-29 and continued public hearings Nos. 21-24 & 21-25 was made by Joseph Hanna; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

ACCEPTANCE OF MINUTES: June 24, 2021

Motion to accept the minutes of June 24, 2021 was made by Peter DeLucia; seconded by Juan Rivas. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

The next regular meeting is scheduled for **July 22, 2021**

PUBLIC HEARINGS:

#21-26: Mazzucco, Ward, Esq., Agent, 57-77 Joe's Hill Rd., (B12016), RA-80 Zone
Sec. 3.G.3.(d): Allow construction of a swimming pool in the front yard.

Ward Mazzucco, Esq. represented his clients for this application. He submitted a presentation to illustrate the property and desired location for the pool. He explained that there will be screening to

protect the neighbors. The area for the proposed pool has already been excavated; however, the Sindells ceased construction as soon as they realized there was an issue with the location.

The hardships include the corner location of the lot with two front yards and the location of the pre-existing septic system. Attorney Mazzucco said the location is far from Tanglewood Drive.

Mr. Moore said, when visiting the property, the septic system is well staked out, and the property is well screened. Mr. DeLucia said the described area is the only logical choice, and the screening-arborvitaes are about 20' tall. There was no one to comment in favor or opposed.

Motion to close made by Joseph Hanna; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Joseph Hanna; seconded by Juan Rivas. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to approve No. 21-26, per plan submitted, was made by Juan Rivas; seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

#21-27: Vazquez, Juan C., 23 Maple Ridge Rd., (G11080), RA-20 Zone.

Sec. 4.A.3: Reduce minimum side yard setback from 15' to 6.9'; Increase maximum building coverage from 20% to 23.7%.

Valmar Franca, Jr. of the Franca Group LLC, presented this application on behalf of Mr. Vazquez. Mr. Franca explained that he has been asked to make modifications to the residence due to a Court order for a family member that includes compliance with ADA standards. The reason for the expansion is that they had to stay on the first floor. The expansion does not exceed the existing footprint of the current home. The hardship is to accomplish this, they must contain the expansion on the first floor. Mr. DeLucia asked about the ADA compliance

The coverage variance is due to the undersized lot. They are requesting 3.7% over the maximum of 20%

Mr. Moore asked if the enclosed porch will be year round and be within the existing footprint. Mr. Franca responded, "Yes". Mr. Moore said his survey did not show the front porch. Mr. Franca explained that it is within the setback and the coverage percentage is accurate. Mr. Moore questioned if the front porch was included in the requested coverage percentage, to which Mr. Franca replied, "Yes". Mr. DeLucia asked if the addition will be handicapped compliant. The front porch will accommodate a ramp if it is ever needed. Mr. DeLucia asked if this renovation is because a handicapped person will live there? Mr. Franca indicate that is the correct. Mr. Franca said the number of bedrooms will remain the same.

Mr. Rivas asked for the current square footage of the dwelling and total with the addition.

Mr. Franca indicated the current sq. ft. is 1,056 and with the addition it will be 1,701 sq. ft. When Mr. Moore questioned the number of bedrooms and baths, Mr. Franca stated there will be three bedrooms and two baths. Upon further discussion, Mr. Franca said there was a third bathroom in the basement.

Mr. Franca submitted an email in favor of this variance from Guy S. McFarland of 21 Maple Ridge Road. Mr. Franca read that letter into the record. An email in opposition was received from Cheryl Andrews and read into the record by Acting Chairman Rodney Moore. In response to the opposition Mr. Franca said with the exception to two corners, everything is in the setbacks. The space they are changing allows ease in moving about the house. Mr. Franca was not privy to the start of the court process. The additional space is to accommodate more indoor open space, not outdoor. They are not increasing the number of bedrooms.

Motion to close was made by Joseph Hanna; seconded by Juan Rivas. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Joseph Hanna; seconded by Pete DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to approve No. 21-27, per plan submitted, was made by Joseph Hanna; seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

#21-28: Solimine Contracting, John Danise, Contractor, 17 Robinhood Rd., (C06095), RA-40 Zone, Sec. 4.A.3: Reduce minimum side yard from 25' to 15.2'.

Mr. John Danise, Contractor, presented this application. Mr. Danise described this property as a corner lot, currently non-conforming, and the owners would like to add a dining room. The house currently sits within the setback. The addition is 8' x 12'.

Mr. Moore asked if the addition could be shifted a bit, and said that the two road frontages are not really a hardship. Mr. Danise offered some photos via his phone and said the kitchen and bath would have to be reconfigured if the addition was shifted. Mr. DeLucia remarked that the house is not perpendicular to the neighbor. Mr. Moore was able to share his screen to assist Mr. Danise with this application. Mr. Danise further explained the configuration of the existing floor plan and this was the best solution without creating a more expensive addition.

Motion to close made by Peter DeLucia; seconded by Juan Rivas. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Juan Rivas; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to approve No. 21-28, per plan submitted, was made by Joseph Hanna as the house exists at 16' and this is only a 1' increase into the setback; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

#21-29: Curry, Bernard F. III, contract purchaser, 7,9,13, & 15 Miry Brook Rd., a/k/a Parcel 1: "Sugar Hollow Rd.", (G18007) and Parcel 2: 15 Miry Brook Rd., (G18016), IL-40 Zone.
Sec. 6.A.3., 6.C.2.(d), and 8.C.1.c.(2): Allow parking spaces within 5' of the property line on Sugar Hollow Rd. & Miry Brook Rd. where a front-yard setback of 30' is required. Sec. 6.C.2.(b): Permit a landscape buffer of 5' along the property's frontage on Sugar Hollow Rd. & Miry Brook Rd. where 20' is required. Sec. 8.C.3.b. & 8.D.3.: Permit alternative site landscaping in lieu of trees & zero (0) street trees where twenty-one (21) are required. Sec. 6.A.5.g.(3): Allow vehicular access onto the site from Wallingford Road, a local street. The subject property is owned by Sugar Hollow Land Development LLC.

Meaghan Miles, Esq., a land use attorney with Carmody, Torrance, Sandak & Hennessey LLP, 707 Summer Street, Stamford, CT, representing Bernard F. Curry III, the contract purchaser. They are requesting four variances. Attorney Miles introduced her full team: Michael Sweeney, Esq. of Carmody, Torrance, etc., Bob Carinci, COO of Curry Automotive, Mike Lambert, Site Engineer from Civil 1, and Michael Kozlowski from Claris Construction.

Curry is a full-service retail automobile and commercial real estate ownership and management firm. They currently own and operate 12 dealerships in Connecticut, Georgia, Massachusetts and New York. They own the property they operate on. The intent for this property is a Mercedes-Benz dealership.

Attorney Miles offered a power point presentation showing the property, approximately 2.5 acres, in the IL-40 Zone near Route 7 and the off ramp to Route 7 on Sugar Hollow Road. The property is next to Danbury Municipal airport. There are three other dealerships up the street, and the property is adjacent to Kissen Brook. She explained this is a highly visible site from the airport & Route 7. Since 2018 has been used for storage of construction equipment and stock piling of soil and gravel. Where the dirt ends and grass begins is the property line. The property also fronts Wallingford Road, a local street. While showing the driveway area, Acting Chairman Rodney Moore asked if the curb cut for the driveway already exists on Miry Brook? Attorney Miles said that what she was showing was for both cars and trucks and will act as the main entrance.

Attorney Miles explained a 30' setback is imposed on the vast majority of the property. Development is further restricted due to the site's proximity to the airport and the watercourse, Kissen Brook. The request for parking in the setback is the minimum necessary to permit reasonable use of this property and particularly for this economic development of a Mercedes-Benz dealership. There are no buildings in the setbacks. They don't want cars right up against the street so there will be a nice separation for people driving by or pedestrians between the cars and the street with robust landscaping along the parking in the setback. Passersby will feel the intent of the Zoning Regulations are being met.

Peter DeLucia asked if the topography would be leveled off along the area where the display cars are proposed to be parked – will it be somewhat flush with the street? Mike Lambert confirmed Sugar Hollow – stay relatively close to current grade because of the DOT ROW they are trying to avoid an encroachment permit at the moment. Going down Sugar Hollow there will be a bit of a dip, but will be level as it is currently.

Pre-application review with staff and the goal is a final site plan. To bring to fruition, 4 variances are required, which Attorney Miles stated. Parking in front yard a 30' set back is required with 20' landscaped. Asking for a limited number

Paul Rotello, Councilman for the Sixth Ward in Danbury, asked if the State of Connecticut widened the road allowing parking to go right to the edge might cause problems. He is not against the project, but is concerned that if the variances are granted, and the applicant withdraws from the project, how will that affect the area?

Benjamin Chianese, Councilman for the Sixth Ward in Danbury, said he was not against the proposal and anything is better than what was there. He continued to say that Wallingford Road is only 18' wide and the City requires 26'. He also said that parking on the front lawn is his pet peeve, and parking on the front lawn is governed by an ordinance and in Danbury it is prohibited. He continued by stating that the ordinance trumps zoning and ZBA and suggested obtaining Corporation Counsel's opinion regarding parking on the front lawn. Mr. Chianese requested continuing the public hearing until corporation counsel can render an opinion regarding parking on the front lawn in an IL-40 property.

Duane Perkins, Councilman for the Fifth Ward, is concerned primarily about parking. Driving down Wooster Heights it would take away from the character of that street with the existing auto dealers by having all of the extra parking surrounding the building. He agrees with airport administration and the landscaping; however, he is very concerned with three sides of parking and potential increased traffic on Wooster Heights. He did not see a sidewalk listed in the schematic.

Attorney Miles addressed the Councilmen's questions regarding Kissen Brook and noted they (the applicant) still have to receive wetlands, site plan, special exception approvals, a Certificate of Location Approval, and FAA approval for building height. However, to Mr. Rotello, she doubts there is anything currently in place to protect Kissen Brook runoff. A robust storm water collection system will be installed with improvements to existing conditions. Traffic study will be reviewed under the Special Exception approval application; mitigation measures will be implemented. She will recommend a traffic study to the applicant. She further stated that variances run with the land and are connected to the site plan. Hardships remain the same and would still exist. She stated that Curry is very committed to this location. Regarding Sugar Hollow Road: If the State of Connecticut Department of Transportation expanded the highway, there will still be a 5' buffer and it will have additional landscaping, shielding the parking.

Regarding Councilman Chianese's concerns: If widening Wallingford Road comes up at Zoning review, it will be addressed. There would not be parking on the front lawn or parking on the grass. This variance request is to prevent parking on the front lawn.

To Mr. Perkin's concern about visibility of parking – This site would not be feasible as a dealership if storage spaces were not placed on the roof. This is a creative solution to parking and storage.

Acting Chairman Rod Moore reminded Attorney Miles about Mr. Perkins' question about sidewalks. Michael Lambert, P.E. answered that sidewalks exist across the Miry Brook and Wallingford Road. At Sugar Hollow and Miry Brook there is a ramp will be expanded across the property to connect to an existing sidewalk on their property. No sidewalks on Sugar Hollow, but on Wallingford and Miry Brook.

Michael Sibbitt asked why not Sugar Hollow and Mr. Lambert responded that this is a State highway and elevation difference with road and their site, the road elevation creates a challenge and would end up as a dead end. Mr. Sibbitt disagreed.

Acting Chairman Rod Moore asked Sean Hearty about the ordinance pertaining to grass lawns. Mr. Hearty does not think the ordinance would restrict the ZBA from granting the variance.

Motion to close made by Joseph Hanna; seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Joseph Hanna; seconded by Petr DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to approve No. 21-29, per plan submitted, was made by Michael Sibbitt, seconded by Joseph Hanna. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

CONTINUED PUBLIC HEARINGS:

#21-24: Magner, James, 4 Lake Road, (J02031), RA-20 Zone

Sec. 4.A.3 Reduce minimum front yard setback from 30' to 27.8' to roof overhang of proposed covered porch; reduce minimum side yard setback from 15' to 8.2' to proposed porch; reduce minimum side yard setback from 15' to 8.9' to existing balcony. Sec. 8.A.2.b Allow drainage discharge onto the road. Sec. 8.A.2.c.(4) Reduce bottom edge of excavation from minimum of 5' to 0' for proposed and existing retaining walls.

Mr. Moore asked Mr. Magner why he was delayed presenting an application to the Zoning Board of Appeals. He said he was delayed by the surveyor. He also explained that this is a home that will be inhabited part time (seasonally).

The hardship is the front door is on the side of house and 5' off the grade and needs a platform to access the door. He is also 300' off the lake and front porch would be perfect place to view the lake. He needs some kind of porch to get into the house. Stairs would be too dangerous. He said the whole yard is a slope to the street. He is requesting the retaining walls so that you can walk on some kind of level surface, sit on the patio, and park a car. The old paved driveway allows only for only one car. He

wants to clear out the dirt and put in a retaining wall so that he can get three cars in the driveway. Mr. Moore knows this was a mess when Mr. Wagner purchased it, and Mr. Moore wondered how he got this far without a variance. The Cease & Desist was issued over a year ago. Mr. Wagner said he received a permit in January 2020 and agreed the C & D was issued about a year ago. Mr. Moore asked if Mr. Wagner was granted all of the variances, how long would the construction take? Mr. Wagner said three months, and Mr. Moore suggested that a construction calendar should be developed as a legally binding document if the variances are approved. Mr. Moore asked about the retaining wall and suggested a stucco façade or textured paint and would Mr. Wagner accept that stipulation if granted? He agreed. Mr. Moore continued and acknowledged permission by the association for drainage onto the road.

Mr. Wagner apologized to the Board and neighbors that it has taken so long. Surveyor delayed him and he had to get an engineer regarding the wall. Mr. Moore confirmed that Mr. Wagner knows this is seasonal use. Mr. Moore asked what the City typically considers seasonal? Zoning Enforcement Officer Sean Hearty said the seasonality of the use is dictated by the Health Department because there is not a full septic there.

Board Member Juan Rivas asked Sean Hearty if the permit was granted in January and the Cease & Desist was issued May 11, 2020, was there any construction done in between those months? Mr. Rivas said that a lot looks completed already. Mr. Rivas continued to remark that either a lot was done in five months or it was completed after the cease. Sean Hearty said the issued cease referenced the point of discharge and location of excavation. Assistant Zoning Enforcement Officer Tim Rosati did not list the setback violations at the time. Mr. Wagner said no structural work was done between May 2020 and today. Mr. Rivas said the balcony was new and asked about the two walls. Mr. Wagner said he didn't want to be right on the street and then thought a two-tier wall would be okay with two 3' walls. Mr. Rivas' last comment was regarding runoff. He asked about the small drain, how will that affect the road – won't that flood the bottom of the road where there is a garage? Mr. Rivas does not agree with that even with the approval from the Association.

Mr. Moore asked if there was anyone present in favor. There being none, he asked if anyone was opposed. Mr. Ray Durkin, owner of 6 Lake Road and the property across the street from 4 Lake Road, was present to speak in opposition. Mr. Durkin said 4 Lake Road has a long history and he said he was unaware of any discussion by the Homeowners Association about drainage and the permission granted to Mr. Wagner. He went on to explain that the previous owners of his property installed their own drainage which goes under his driveway because they were concerned about ambulance access and the water that might freeze on the street. Mr. Durkin said now there is no place for the water to go because of the walls Mr. Wagner has built. He continued to say the new porch is extended to within 2' of the property line. Anyone sitting on the porch can see into their home. He would have preferred Mr. Wagner install plantings. Mr. Durkin did agree with his parking plan because the roads are very narrow and now with the new walls, you can't park in the front anyway. Mr. Durkin stated that Mr. Wagner has done a lot of work since the stop order was issued.

Acting Chairman Rodney Moore inquired about the previous height of the walls. Mr. Durkin said they were 2'-3' in the front, very old, and natural. More sloped to the road and more room for runoff – no concrete.

Nancy Schneider, neighbor across the road and Association Treasurer, said there was no retaining wall in the front of the property. It was a graduated hill planted with greenery. On the abutting side there was a 1950s stone wall that was added to and filled in behind. She said that most members are excited to see this blighted property rehabilitated; however, they are anxious to have it beautified without adversely affecting their properties. Drainage is a concern for her as well.

Mr. Moore said the letter from the Association said they would not object. Ms. Schneider was unaware of any discussion with Board members, and as a homeowner south of the property regarding the water issue, she would not have signed the letter.

While Acting Chairman was accessing Mr. Magner's building plans, Board Member Michael Sibbitt asked Mr. Magner how relatives in wheel chairs would access his 2 ½ story house? Mr. Magner said they would go up the stairs, onto the deck, and into the house. Mr. Magner said they carry them, explaining they are in their late eighties.

Mr. Magner who owns the stone retaining wall abutting 6 Lake Road offered to remove it, but the area will be pitched even more if he takes it down. Mr. Magner offered to install a dry well next to the stairs where the black pipe runs under the driveway and out to the street. He said it really isn't a big deal. Ray Durkin asked if the town engineer would know if the area could take it. Zoning Enforcement Officer said that the design engineer who did the wall, would need to have a designed system. Mr. Magner would agree to arborvitaes.

Board member Juan Rivas asked about the stop work order . . . did that include the retaining wall? Mr. Hearty explained that the Building Department issues stop work orders. Mr. Hearty said that a Cease & Desist, issued by Zoning, is an immediate cease for filling and excavation. Mr. Rivas is concerned that much of this work was done post Cease & Desist.

Motion to close made by Joseph Hanna; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Juan Rivas; seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to table No. 21-24 until the next regularly scheduled meeting on July 22, 2021 for further discussion and voting of this closed public hearing until City-held plans are reviewed by the Board was made by Rodney Moore. Mr. Rivas said that his vote would be "no" at this time because he has too many questions. He understands the house was blighted, and Mr. Magner is trying to beautify the home; however, he really wants to know if Mr. Magner continued working after the cease and desist was issued. Motion was seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

#21-25: Maskara, Lenore, 33 Robin Hood Road, (C06072), RA-40 Zone

Sec. 4.A.3: Reduce minimum front yard setback from 40' to 33.4' for front porch. Reduce rear yard setback from 20' to 2.3' to roof overhang for garage/storage. Increase building coverage from 50% to 58.6%.

Mr. Chris Souppa provided an updated, revised survey to reflect a small change in position of the requested garage and less of a rear setback request. His new plan eliminates the building coverage increase.

No one present in favor or opposed.

Motion to close made by Juan Rivas; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to go to the voting session made by Peter DeLucia; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

Motion to approve No. 21-25, per revised plan submitted with note that request for building coverage is no longer an issue, was made by Juan Rivas, seconded by Peter DeLucia. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt.

OLD BUSINESS: None

NEW BUSINESS: Protocol for future meetings. Rodney Moore explained to the Board members that there will be options to discuss; however, for the foreseeable future meetings will likely be held via Zoom.

CORRESPONDENCE: None

OTHER MATTERS: None

ADJOURNMENT:

Motion to adjourn made by Juan Rivas; seconded by Michael Sibbitt. All in favor with Ayes from Peter DeLucia, Joseph Hanna, Rodney Moore, Juan Rivas, and Michael Sibbitt. Meeting adjourned at 9:50 p.m.

Respectfully submitted,

Mary S. Larkin
Secretary

